

- (1) Whether claimant suffered an accidental injury arising out of and in the course of his employment with the respondent.
- (2) Whether timely notice of accident was given to the respondent.
- (3) Whether the Administrative Law Judge erred in ordering respondent to provide medical treatment.
- (4) Whether the respondent was deprived of equal protection and due process of law in these proceedings.

Claimant in his brief filed before the Appeals Board raised the issue of whether respondent's application for review was timely filed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The first issue the Appeals Board will address is whether respondent timely filed an application for review before the Appeals Board as this issue is dispositive of all issues in this matter. The evidentiary record shows the following facts relating to this issue:

- (1) The preliminary hearing Order of Compensation was entered on October 8, 1996, by Administrative Law Judge Floyd V. Palmer.
- (2) The Nunc Pro Tunc Order for Compensation was entered by Administrative Law Judge Floyd V. Palmer dated October 9, 1996.
- (3) The respondent's application requesting Appeals Board review of those orders was received and filed of record with the Division of Workers Compensation on November 5, 1996.

The time interval in which a party must file a written request for Appeals Board review of a decision made by an Administrative Law Judge is governed by K.S.A. 44-551(b)(1), as amended, which provides in pertinent part:

"All acts, findings, awards, decisions, rulings or modifications of findings or awards, made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days . . . ."

As previously noted, Administrative Law Judge Floyd V. Palmer entered a Nunc Pro Tunc Order for Compensation in this matter dated October 9, 1996. Accordingly, the effective date of the Order was the day after or October 10, 1996. See K.A.R. 51-18-2. Ten days after the effective date of this Order was October 20, 1996, which was a Sunday. Therefore, since the tenth day was Sunday the respondent's time to file its application for review for the Appeals Board would have been extended to Monday, October 21, 1996. See K.A.R. 51-17-1. Respondent filed its Application for Review on November 5, 1996, which was clearly out of time.

In its application for review the respondent makes the statement that he did not receive the Orders from the Administrative Law Judge that are the subject of this appeal until the afternoon of November 1, 1996. The Appeals Board also notes the two Orders entered by the Administrative Law Judge show that respondent's attorney is located in Overland Park, Kansas, instead of his correct location of Topeka, Kansas.

The Appeals Board has visited this issue before in the case of Jaime Still v Huntington Park Amoco, Docket No. 205,358 (March 1996). In that case, the Appeals Board found some statutes that prescribe the time in which an appeal is to be filed permit the extension of the appeal time upon a party showing of excusable neglect based upon failure to learn of the entry of judgement. See K.S.A. 60-2103(a); Schroeder v. Urban, 242 Kan. 710, 750 P.2d 405 (1988). However, K.S.A. 44-551(b)(1), as amended, the statute which prescribes the time period to appeal a matter from the Administrative Law Judge to the Appeals Board does not have such language that would give a court authority to extend the appeal time. In an administrative proceeding, the time for taking an administrative appeal, as prescribed by statute, is jurisdictional, and delay beyond the statutory time is fatal to an appeal. State Bank Commissioner v. Emery, 19 Kan. App. 2d 1063, Syl. ¶ 1, 880 P.2d 783 (1994). Accordingly, the Appeals Board finds that since claimant's application for review was filed out of time the Appeals Board does not have jurisdiction to review this preliminary hearing Order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the application for review filed by the respondent on November 5, 1996, is out of time and should be, and is hereby, dismissed. The Order and Nunc Pro Tunc Order for Compensation entered by Administrative Law Judge Floyd V. Palmer dated October 9, 1996, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Patrick R. Barnes, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director